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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,108	06/28/2001	Dwip N. Banerjee	AUS920010309US1	6271

45440 7590 03/08/2007
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EXAMINER

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ART UNIT	PAPER NUMBER
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2143

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	03/08/2007	PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/894,108
Filing Date: June 28, 2001
Appellant(s): BANERJEE ET AL.

Jeffrey L. Streets
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6 December 2006 appealing from the Office action mailed 6 July 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The following change is due to an inadvertent typo by Examiner. However it is clear from the Office Action that the rejection relies on both Drosset and Nye. Applicant clearly identifies reliance on the secondary reference and makes clear arguments regarding the combination of the references as well. The changes are as follows:

Claims 1-7, 9, 11-15, 33, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drosset et al. (U.S. Patent 6,662,231) in view of Nye (U.S. 2003/0028548).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9, 11-14, 33, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drosset et al. (U.S. Patent 6,662,231) in view of Nye (U.S. 2003/0028548).

1. Regarding claim 1, Drosset disclosed a method and system for a subscriber based service over a communication network in which users are set up with a payment schedule by credit card (Drosset, col. 15, lines 19-20), where the website submits a request to debit the account by the schedule chosen (Drosset, col. 15, lines 27-29) and the account may be downgraded to nonpaying membership through invalidation of the payment information i.e. expired or invalid credit card (Drosset, col. 15, lines 47-51) and the user is denied the privileges afforded to paying users (Drosset, col. 15, lines 51-52).

Therefore, regarding claims 1, 33, and 48, Drosset disclosed a method to be executed by one or more processors for managing subscriber access to online subscription content comprising:

(a) providing the subscriber with access to the online subscription service at a first level of service during a subscription period (Drosset, col. 15, line 14, Drosset disclosed a user provided with a paying membership).

(b) after expiration of the subscription period, providing the subscriber with access to the online subscription service at a level of service that is lower than the first level of service during a post expiration period (Drosset, col. 15, lines 21-23, 45-65, Drosset disclosed that if payment is not received on the scheduled payment date then the users membership is downgraded to a non-paying membership).

Drosset also states that a user's information may be preserved for a period of time in the expectation that the account may be once again upgraded (Drosset, col. 15, lines 53-57), meaning that during a specified "post expiration" period, Drosset disclosed keeping user's information, and it is deleted after a period of time. Therefore, Drosset disclosed that over a certain period of time, a user's status may transition from one category into another category, and eventually, the user's information may be dropped.

The overall function of Drosset is to downgrade the user's account and then drop the user's information after a time period. Clearly, dropping the user's information would require the user to recreate this information if the user were to continue using the service of Drosset. One of ordinary skill in the art would interpret recreating the user information as recreating the account since the user would not be able to use the

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account as they could before the user information was dropped. Therefore, one of ordinary skill in the art would interpret the user information being dropped and the user having to recreate the user information to mean that the previous account had been dropped.

However, Drosset did not explicitly state a termination category for access unless a subscription is renewed.

In an analogous art of providing levels of access to online subscription services, Nye disclosed that, after a certain period of time has elapsed, and the user has not renewed their subscription, the subscription is placed into a canceled subscriptions category (Nye, page 4, ¶ 46). Nye disclosed that *"over time the status of the data that resides in one category transitions to another category, known as a state transition...For example the data held in the free trial subscribers category is moved to the canceled subscriptions category when a person lets their subscription run out..."* Therefore, user accounts of Nye are cancelled unless the user renews their account.

Both Drosset and Nye disclosed state transitions for member's online subscription services based on certain time periods and other conditions, such as payment (see Drosset, col. 15, lines 45-60, and Nye, paragraphs 46-48).

It is within the level of one of ordinary skill in the art that keeping user accounts that are not utilized would be prohibitively expensive in terms of storage space over time. A benefit for Drosset deleting the user information would be to reduce the expense in storage space.

Therefore it would have been obvious for one of ordinary skill in the art at the time the invention was made to incorporate the state transition of account termination into Drosset for the benefit of improving account maintenance by allowing administrators of the subscription service to perform actions on the accounts that users are still utilizing (Nye, page 4, ¶49) and to drop the accounts that are not being used without having to modify the underlying structure of the database (Nye, see Abstract).

Claims 33 and 48 include a computer program product with limitations that are substantially similar to those of claim 1. Therefore claim 33, and 48 are rejected under the same rationale as claim 1 as being substantially similar.

2. Regarding claim 2, Drosset and Nye disclosed the limitations substantially as claimed, as described in claim 1, including wherein the level of service is determined by a service parameter selected from download rate, portion of subscription content accessible, access to member-only features, color formatting, sound and combinations thereof (Drosset, col. 15, lines 47-65, Drosset disclosed a "Subscribed column" for the user's entry in the table, which shows if a user has access to member-only features).

3. Regarding claims 3-5, Drosset and Nye disclosed the limitations, substantially as claimed, as described in claim 2, including gradually reducing the level of service during the post-expiration period (Drosset, col. 15, lines 45-55, Drosset disclosed incrementally reducing the level of service once), and notifying the user of any problems existing with their account (Drosset, col. 15, lines 29-58).

4. Regarding claim 6, Drosset and Nye disclosed the limitations, substantially as claimed, as described in claim 1, including allowing customers to renew their subscription at the paying membership level (Drosset, col. 15, lines 40-67).

5. Regarding claim 7, Drosset and Nye disclosed the limitations, substantially as claimed, as described in claim 6. Claim 7 is a reiteration of steps performed in claims 1 and 6, and is therefore rejected under the same rationale.

6. Regarding claim 9, Drosset and Nye disclosed the limitations, substantially as claimed, as described in claim 1, including notifying the customer of problems that need to be fixed for subscription renewal (Drosset, col. 15, lines 29-35).

7. Regarding claim 11, Drosset and Nye disclosed the limitations, substantially as claimed, as described in claim 1, including wherein the subscriber is a potential new subscriber and wherein the subscription period is a trial subscription period (Nye, ¶ 46).

Thus it would have been obvious to one of ordinary skill in the art at the time of the invention was made to include Nye's teaching of various states of customers' subscriptions with Drosset to not only provide specific promotions and offers (Nye, ¶ 44), but also to efficiently be able to determine the customer's state transitions from one state to another (Nye, ¶ 45).

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8. Regarding claim 12, Drosset and Nye disclosed the limitations substantially as claimed, as described in claim 11, including wherein the level of service is determined by a service parameter selected from download rate, portion of subscription content accessible, access to member-only features, color formatting, sound and combinations thereof (Drosset, col. 15, lines 47-65).

9. Regarding claims 13-14, Drosset and Nye disclosed the limitations substantially as claimed as described in claims 1 and 11. Therefore claims 13-15 are rejected under the same rationale.

Claims 21, 22, 29, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drosset and Nye in view of Davis et al. (U.S. Pub. 2002/0040395).

10. Regarding claims 21, 29, and 46 Drosset and Nye disclosed a system with limitations that are substantially similar to those of claim 1, further including managing a subscriber's account through the use of a subscription service, subscription database, and a non-renewal database (Drosset, col. 2, lines 40-45).

Drosset and Nye did not explicitly disclose that the database contains post expiration access frequency.

However, in the same field of endeavor, Davis teaches a system for online subscription service (Davis, ¶ 32), which includes a database for recording client's activities, including frequency of accessing data from online provider (Davis, ¶ 9). Thus

it would have been obvious to one of ordinary skill in the art at the time of the invention was made to include Davis 's idea of tracking user's frequency of accessing online provider and commercialize targeting the particular user with the teachings of Drosset and Nye for determining users' behavior after subscription period has expired. Because in doing so, the system of Drosset would be able to accurately predict whether the particular subscribers would be interested in or could be induced to renew subscription.

11. Regarding claim 22, Drosset, Nye, and Davis disclosed the limitations substantially as claimed, as described in claim 21, including wherein the level of service is determined by a service parameter selected from download rate, portion of subscription content accessible, access to member-only features, color formatting, sound and combinations thereof (Drosset, col. 15, lines 47-65).

12. Claims 16-19, 23-28, 30-32, 34-40, 42-45, and 47 include limitations substantially similar to the limitations of claims 1-7, 9, 11-15, 21, 22, 29, 33, 46, and 48, and are therefore rejected under the same rationale as being substantially similar.

Allowable Subject Matter

Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Claim 15 includes the rate of reducing the level of service being determined by factors comprising a frequency that the potential new subscriber accessing the trial subscription during the post-trial subscription period and a frequency that the potential new subscriber accessed the trial subscription during a trial subscription period, which, in addition to the rest of the claim limitations, are distinguished from the prior art.

(10) Response to Argument

a. (3) Applicant's arguments regarding claim 1, beginning on page 8.

Applicant asserts that claim 1 includes "three levels of access to an online subscription service" the three levels of access including, "(1) a first level of service during a subscription period, (2) a level of service that is lower than the first level of service during a post-expiration period, and (c) terminating subscriber access to the online subscription service after the post-expiration period unless the subscription is renewed" [see Appeal Brief, page 8, last paragraph].

Applicant argues, "Drosset teaches a system in which there are only two membership levels, either paying and non-paying" [see Appeal Brief, page 8, last paragraph].

Applicant asserts that "the examiner is commenting on *different categories of data*, rather than *different levels of access* to online subscription service as claimed." [see Appeal Brief, page 9, second paragraph].

Applicant argues, "this preservation of data does not constitute a different level of access to the system" [see Appeal Brief, page 9, last paragraph].

Examiner respectfully disagrees.

Drosset disclosed downgrading from paying to non-paying, and the user is denied privileges afforded to paying customers (Drosset, col. 15, lines 47-53). This clearly defines the first two access levels of the claim.

Drosset further disclosed, "Some of the user's information, such as playlists and demographic information may be preserved for a period of time in expectation that the account may be once again upgraded to paying status" (Drosset, col. 15, lines 53-57).

The fact that only "some" of the user's information may be preserved for a period of time would lead one of ordinary skill in the art that ALL of the user's information is deleted after that period of time is up. It wouldn't be preserved anymore. It would have been within the knowledge of one of ordinary skill in the art that if all of the user's information is deleted, the account is no longer existent, i.e. terminated, and therefore access is terminated.

As explained in the above rejection, although Drosset led to it, Drosset did not explicitly state terminating access, and therefore Nye was relied on to show that terminating access to users' online subscription accounts existed at the time of the invention (see Nye, paragraphs, 46-48).

Both Drosset and Nye disclosed downgrading of online subscription services. Drosset disclosed downgrading a user's account to nothing unless the user renews their

subscription (Drosset, col. 15, lines 53-57). Nye disclosed downgrading a user's account by canceling the account unless the user renews their subscription (see Nye, paragraphs, 46-48).

a. (3) continued, Applicant's arguments to claim 1, beginning on page 10.

Applicant asserts, "While the present rejection is stated to be an obvious rejection over Drosset alone, the Examiner appears to rely upon a secondary reference, Nye" [see Appeal Brief, page 10, first paragraph].

It is clear from the Final Office Action (dated, 7/6/2006) that the rejection relies on both Drosset and Nye and that the single reliance was an inadvertent typo on Examiner's behalf that does not affect the grounds of the rejection. Applicant clearly identifies reliance on the secondary reference and makes clear arguments regarding the combination of the references as well. Therefore, the Examiner's rejection under the combination of the references is submitted to be proper.

In regards to the Nye reference, Applicant argues that there is "no suggestion that any of these different 'status' categories would result in a different level of access" [see Appeal Brief, page 10, second paragraph].

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Applicant then asserts, "Nye makes no suggestion that this categorization would result in a different level of access to subscription service other than '**access**' (for trial subscriptions or paid subscriptions) or '**no access**' (for nonsubscribers or nonrenewing subscribers) [see Appeal Brief, page 10, third paragraph].

Examiner respectfully disagrees.

From the above assertion, Applicant clearly states that Nye does have different levels of access. The above assertion shows that Nye has multiple levels of access as follows:

- 1) '**access**' for trial subscriptions
- 2) '**access**' for paid subscriptions
- 3) '**no access**' for nonsubscribers
- 4) '**no access**' for nonrenewing subscribers

Clearly these 4 different types of access equate to the different levels of access as required by the claim.

As explained in the above rejection, Nye was relied on to show that terminating access to users' online subscription accounts existed at the time of the invention (see Nye, paragraphs, 46-48). Clearly when a user's account moves to the cancelled category, the user's access level has changed to '**no access**'.

Claims 6-7 depend from claim 1. Claims 33 and 34 are directed to a computer program product with limitations that are substantially similar to those of claim 1. Therefore the rejections for claims 6-7, 33, and 34 should be sustained.

Applicant's arguments regarding claim 2, page 11 of Appeal Brief

Applicant asserts, "The examiner makes the unsupported conclusion that Drosset and Nye disclose the limitations of claim 2. The broad citation to Drosset at col. 15, lines 47-65 does not disclose, teach or suggest that the level of service is determined by a service parameter and it is not clear what service parameter the Examiner is citing to" [see Appeal Brief, page 11, Under the heading: Claim 2].

Examiner respectfully disagrees.

The cited portion clearly disclosed a service parameter that determines the level of service for the user. Drosset disclosed, "the Subscribed column for the user's entry in table of Fig. 2 is set to No and the user is denied privileges afforded by paying customers." Clearly this Subscribed column shows a parameter that determines if the user is a paying customer, which determines if the user has access to member only features. Therefore the rejection for claim 2 should be sustained.

Applicant's arguments regarding claims 3-5, page 11 of Appeal Brief

Applicant argues that Drosset fails to disclose "gradually reducing the level of service during the post-expiration period" and "notifying the subscriber of the lower service level and of the service parameters to be reduced."

Applicant argues, Drosset does not disclose any further reductions in the level of service that would occur after expiration" [see Appeal Brief, page 11, Under the heading: Claims 3-5].

Examiner respectfully disagrees.

The term “gradually” was interpreted in light of the instant Specification, which includes the definitions, “reduce but not terminate, the level of service”, “which may include decreasing the content available to a subscriber.”

Drosset disclosed downgrading from paying to non-paying, and the user is denied privileges afforded to paying customers (Drosset, col. 15, lines 47-53). Clearly this occurs during a post expiration period, i.e. it occurs after the paid subscription runs out. The level of service is clearly “reduced but not terminated”. Clearly Drosset explained that paying customers have more privileges (Drosset, col. 15, lines 40-44). Therefore, the downgrading from paying to non-paying follows the definition of “gradually” reducing. The downgrading from paying to non-paying also reduces incrementally to the next level of service (as claim 4 requires). Clearly the downgrade occurs based on the factor of the user not paying for the subscription (as claim 5 requires). Clearly the user is notified of their account information through a webpage (Drosset col. 15, lines 57-58). Therefore the rejections for claims 3-5 should be sustained.

Applicant's arguments regarding claim 9, page 12 of Appeal Brief

Applicant asserts that the cited portion of Drosset (col. 15, lines 29-35) fails to disclose subscription renewal [see Appeal Brief, page 12, Under the heading: Claim 9].

Examiner respectfully disagrees.

Clearly the cited portion disclosed notifying via webpage, the user's account information, including payment information. Clearly this payment information corresponds to what the user is actually paying for, which Drosset disclosed as "in the expectation that the account may be once again upgraded (see Drosset, col. 15, lines 50-57). This portion was cited for claim 1, which claim 9 depends on. Upgrading an account again clearly means renewing the account.

Applicant's arguments regarding claim 11, page 12 of Appeal Brief

Applicant asserts, "Because claim 11 depends from claim 1, claim 11 is direct to providing access at three levels, even where the user is a potential new subscriber during a trial subscription period. As previous stated, Drosset only provides a paying and nonpaying membership" [see Appeal Brief, page 12, Under the heading: Claim 11].

Examiner respectfully disagrees for the same reasons set forth in the above arguments to claim 1.

Applicant's arguments regarding claim 12-14, page 12 of Appeal Brief

Applicant reasserts the comments made above with regard to claim 11. Applicant further argues, "the broad citation to Drosset at col. 15, lines 47-65 does not disclose, teach, or suggest that the level of service is determined by a service parameter and it is not clear what service parameter the Examiner is citing to" [see Appeal Brief, page 12, Under the heading: Claims 12-14].

Examiner respectfully disagrees for the same reasons set forth in the above arguments to claim 1 and as follows.

The cited portion clearly disclosed a service parameter that determines the level of service for the user. Drosset disclosed, "the Subscribed column for the user's entry in table of Fig. 2 is set to No and the user is denied privileges afforded by paying customers." Clearly this Subscribed column shows a parameter that determines if the user is a paying customer, which determines if the user has access to member only features. Therefore the rejection for claim 2 should be sustained.

Applicant's arguments regarding claim 15, page 12 of Appeal Brief

Examiner is persuaded by Applicant's Remarks. As shown above, claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

b. (3) Applicant's arguments regarding claims 21, 29, and 46

Applicant asserts that Drosset failed to disclose a subscription service, subscription database, and a non-renewal database [see Appeal Brief, page 14, Under the heading: Claims 21, 29, and 46, first paragraph].

Examiner respectfully disagrees.

Drosset clearly disclose that the "server has access to user data and audio data files stored in a memory system, such as a database. A user requesting service from

the server is validated to ensure that the user is a subscriber” (Drosset, col. 2, lines 40-45). Clearly this shows a database of user information. As cited in claim 1, the database keeps track of all users, whether they are paid, i.e. subscriber customers, or non-paying, i.e. non-renewal, customers.

Therefore, since Drosset teaches keeping track of users and whether they are subscribers, Drosset disclosed a subscription service. Since Drosset disclosed storing all user information in a database, whether subscriber or not, Drosset disclosed both a subscription database and a non-renewal database.

Applicant asserts that Drosset fails to disclose recording the frequency that a user accesses data from an online provider [see Appeal Brief, page 14, Under the heading: Claims 21, 29, and 46, second paragraph].

Examiner respectfully disagrees.

Davis clearly disclosed, “it is currently possible to track the number of times a particular resource has been accessed” (Davis, page 2, paragraph 9). Davis also disclosed that the teachings of the invention “are equally applicable to... on-line subscription services, on-line database services, private networks, etc.” (Davis, page 3, paragraph 32).

Applicant asserts, “there is no suggest in any of the cited references to modify the teaching for use in a post-expiration period. Neither Drosset, Nye, nor Davis appear

to address activities after expiration of a subscription" [see Appeal Brief, page 14, Under the heading: Claims 21, 29, and 46, third paragraph].

Examiner respectfully disagrees.

Drosset was used to show the claimed activities after the post-expiration period. Drosset disclosed downgrading the user's level of access to non-paying, and taking away certain privileges that only paying members have (Drosset, col. 15, lines 40-45 and lines 47-52) as well as waiting a period of time before deletion of user data if the user has not upgraded (Drosset, col. 15, lines 53-57). Clearly these activities occur after expiration.

Applicant asserts, "that the Examiner has fallen into the hindsight trap and used the Applicants application and claims as a guide to piece together disparate disclosures from the prior art.

Examiner respectfully disagrees.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As explained above, Drosset, Nye, and Davis all disclosed features used for online subscription services (Drosset, col. 15, lines 40-60; Nye, paragraphs 46-48; Davis, page 3, paragraph 32).

Drosset, being the primary reference, clearly disclosed downgrading the users access level, and then after a period of time, reducing the user's information to nothing, depending on if the user renews their subscription. As explained above, while Drosset did not use the words, "terminating...access", it is obvious to one of ordinary skill in the art that the intention of Drosset is to weed out the accounts of users that aren't renewing.

Nye clearly shows reducing user accounts to nothing, i.e. canceled accounts if the user does not renew their subscription after a time period. It is obvious to one of ordinary skill in the art that the intention of Nye is to also weed out the accounts of users that aren't renewing.

Davis disclosed the ability to monitor user actions in on-line subscription services. Clearly it was within the level of one of ordinary skill in the art to use monitoring of user actions in online subscription services. Therefore it would have been obvious to include Davis 's teachings of tracking user's frequency of access to online providers and commercialized targeting of the particular user with the teachings of Drosset and Nye for determining users' behavior after the subscription period has expired. Because in doing so, the system of Drosset and Nye would be able to accurately predict whether the particular users would be interested in or could be

induced to renew their subscriptions. Therefore the rejections for claims 21, 29, and 46 should be sustained.

Applicant's arguments regarding claim 22, page 15 of Appeal Brief

Applicant asserts, "Claim 22 deals with post-expiration instructions. Neither Drosset, Nye, nor Davis disclose the use of post-expiration instructions. It is unclear how the passage cited by the Examiner would disclose this limitation" [see Appeal Brief, page 15, Under the heading: Claim 22].

Examiner respectfully disagrees.

The claim reads, "wherein the post-expiration instruction for the subscriber indicates a service parameter to be reduced, wherein the service parameter is selected from download rate, portion of subscription content accessible, access to member-only features, color formatting, sound, and combinations thereof."

As explained above, Drosset's post-expiration period begins when the user is downgraded from paying to non-paying. The cited portion clearly shows this, as well as, "the Subscribed column for the user's entry in table of Fig. 2 is set to No and the user is denied privileges afforded by paying customers." Clearly this Subscribed column shows a parameter that determines if the user is a paying customer, which determines if the user has access to member-only features" (Drosset, col. 15, lines 47-55).

Therefore the rejection for claim 22 should be sustained.

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c. (3) Applicant's arguments regarding claims 16-19, 23-28, 30-32, 34-40, 42-45, and 47, page 15 of Appeal Brief

· Applicant reasserts the remarks made above in Section a(3) and b(3).

Examiner respectfully disagrees.

For the same reasons presented above, the rejection for claims 16-19, 23-28, 30-32, 34-40, 42-45, and 47 should be sustained.

(11) Related Proceeding(s) Appendix

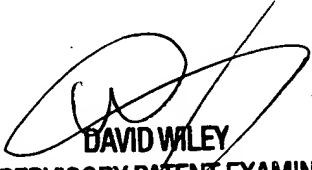
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

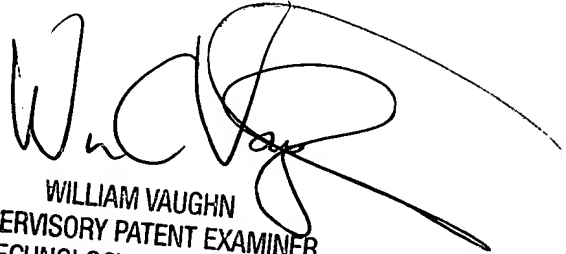
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

JBD

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